Calendar No. 1006

100TH CONGRESS
2d Session

SENATE

REPORT
100-553

SANTA RITA PUBLIC LANDS EXCHANGE ACT OF 1988

SEPTEMBER 27 (legislative day, SEPTEMBER 28), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2352]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2352) to provide for the transfer of certain lands in the State of Arizona, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Santa Rita Public Lands Exchange Act of 1988".

SEC. 2. PAYMENT OF DEBT.

The Secretary of the Interior, acting through the Bureau of Land Management, shall convey to the State of Arizona, a portion of the lands in the Santa Rita Experiment Station lying outside of the National Forest System, (comprising 50,810.94 acres as generally depicted on map AZ-020-01, subpart A, dated September 13, 1988), which the Secretary deems necessary to satisfy the remaining Federal debt to the State of Arizona, as of the date of enactment of this Act, for relinquishments of lands for the Central Arizona Project pursuant to the provisions of the Act of June 20, 1910. The map referenced in this section shall be on file and available for public inspection in the offices of the Arizona State Bureau of Land Management and of the Bureau of Land Management in Washington, D.C.

SEC. 3. LAND ACQUISITION.

(a) STATE LANDS ACQUISITION.—Upon completion of the actions authorized in section 2, the Secretary shall utilize the remaining federal lands in the Santa Rita Experiment Station, described in Section 2, to acquire through exchange, pursuant to

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the exchange provisions of the Federal Land Policy Management Act of 1976, all of the state trust lands within Catalina State Park (as generally depicted on map AZ–020–02, subpart B, dated September 13, 1988), Buenos Aires National Wildlife Refuge, (as generally depicted on map AZ–020–05, subpart A, dated September 13, 1988), the Black Canyon Corridor (as generally depicted on map AZ–020–03, Subpart A, dated September 13, 1988), Arivaca Lake (as generally depicted on map AZ–020–05, subpart B, dated September 13, 1988), the Madera-Elephant Head Trail area (as generally depicted on map AZ–020–01, subpart C, dated September 13, 1988), and near Lake Pleasant (as generally depicted on map AZ–020–03, subpart B, dated September 13, 1988). The maps described in this subsection shall be on file and available for public inspection in the offices of the Arizona State Bureau of Land Management and of the Bureau of Land Management in Washington, D.C.

(b) ADDITIONAL ACQUISITION AUTHORITY.—The Secretary is also authorized to acquire the state lands described in subsection (a) by purchase or eminent domain to the extent determined by him to be appropriate.

(c) LANDS TO BE INCLUDED IN THE NATIONAL WILDLIFE REFUGE SYSTEM.—Those lands within the Buenos Aires National Wildlife Refuge that are acquired in accordance with this Act shall be added to the National Wildlife Refuge System and managed in accordance with the National Wildlife Refuge System Administration Act of 1966.

(d) LANDS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT.—Those lands near Lake Pleasant and within the Black Canyon Corridor that are acquired by this Act shall be administered by the Bureau of Land Management, in accordance with the provisions of the Federal Land Policy and Management Act of 1976.

SEC. 4 ADDITION TO THE CORONADO NATIONAL FOREST.

(a) INCLUSION IN NATIONAL FOREST SYSTEM.—Those lands in the Catalina State Park, Madera-Elephant Head Trail area, and the Arivaca Lake area that are acquired pursuant to this Act, shall be included in the Coronado National Forest, and the exterior of the Coronado National Forest shall be modified to include such lands on the date of acquisition by the United States. The Catalina State Park lands shall be managed cooperatively with the Arizona State Parks Department for public access and recreation purposes under the authorities of the National Forest System. Subject to valid existing rights, such lands are hereby withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public lands laws;

(2) location, entry, and patent under the United States mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing.

(b) LANDS EXEMPT FROM FURTHER PLANNING.—The lands added to the Coronado National Forest by this section shall be administered under the laws and regulations applicable to National Forest System lands except that the lands described in this section shall be exempt from any further planning requirements of the National Forest Management Act of 1976 until the final 1986 forest plan for the Coronado National Forest is revised. At that time, future management direction for these lands will be determined as a part of planning for the entire National Forest.

SEC. 5 REVOCATION OF SANTA RITA RANGE EXECUTIVE AND PUBLIC LAND ORDERS.

(a) REVOCATION.—Notwithstanding any other provision of law, in order to facilitate the transfer of certain Federal lands, Executive Order 1222 dated July 1, 1910, and Public Land Order 1363 dated November 14, 1956, which withdrew the Santa Rita Experimental Range for a Forest and Range Experiment Station, are hereby revoked in their entirety.

(b) EFFECTIVE DATE.—The effective date of the revocation made by this section shall be—

(1) for those lands lying within the National Forest System the date of enactment of this Act; or

(2) for those lands lying outside of the National Forest System the date of transfer of patent to the State of Arizona.

SEC. 6. WITHDRAWALS FOR ADMINISTRATIVE SITE.

(a) WITHDRAWAL.—Subject to valid existing rights, the following described lands within the Coronado National Forest are hereby withdrawn from all forms of—

(1) entry, appropriation, or disposal under public lands laws;

(2) location, entry, and patent under the United States mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing:

All of section 19, the SW¼NW¼, and W½SW¼ of section 20, the N½NE¼ of section 30; all in T. 19 S., R. 15 E., G&SRM; containing approximately 751.04 acres. (Florida Canyon).

Such lands shall be used for research purpose in accordance with applicable law.

(b) REVOCATION OF ORDER.—Notwithstanding any other provision of law, in order to facilitate the administration of the Federal lands described in subsection (a), Public Land Order 1080, dated Februeray 28, 1955, which withdrew lands for forest administrative sites, is hereby revoked as it relates in sec. 19, T. 19 S., R. 15 E., G&SRM.

SEC. 7. REVOCATION OF KOFA NWR EXECUTIVE AND PUBLIC LAND ORDERS.

(a) REVOCATION.—Notwithstanding any other provision of law, in order to transfer the administration of certain Federal land, Executive Order 8039, dated January 25, 1939, and Public Land Order 5637, dated April 25, 1978, which withdrew and established administrative jurisdiction for the Kofa National Wildlife Refuge, are hereby revoked on the following described lands:

Secs. 1 through 18, N½NE¼ of sec. 19, N½N½ and S½NE¼ of sec. 20; N½ of sec. 21; N½ of sec 22; and NW¼NW¼ of sec. 23, T. 2 N. R. 15 W.; secs. 1 through 12, N½, N½S½ and S½SE¼ of sec. 13; N½ and N½SE¼ of sec. 14; N½ of sec. 15; N½ of sec. 16; N½ and N½S½ of sec. 17; and N½ and N½S½ of sec. 18, T. 2 N., R 16 W.; secs. 1 through 12, NE¼, E½NW¼, NW¼NW¼ and NE¼SE¼, of sec. 13; NW¼ of sec. 15; N½ of sec. 16; N½, N½S½ and SW¼SW¼ of sec. 17; and sec. 18, T. 2 N., R. 17 W.; secs. 1 through 14, N½, N½S¼, SE¼SW¼, and S½SE¼ of sec. 15; N½, NE¼SW¼ and N½SE¼ of sec. 16; N½ of sec. 17, and lot 1, N½NE¼ and NE¼NW¼ of sec. 18, T. 2N., R. 18 W.; all G&SRM, containing approximately 42,769.64 acres of federal land.

(b) USE OF LANDS.—The Secretary shall allow such uses, including recreatonal development, of public lands described in subsection (a) which will conserve, protect, and enhance the bighorn sheep and other wildlife and plant species contained on such lands.

(c) ADMINISTRATION OF LANDS.—The lands described in subsection (a) shall be under the administrative jurisdiction of the Bureau of Land Management to be administered as public lands under the provisions of the Federal Land Policy and Management Act of 1976, where consistent with the provisions of subsection (b).

(d) WITHDRAWAL.—Subject to valid, existing rights, the lands described in subsection (a) are hereby withdrawn from all forms of—

(1) entry, appropriation, or dispoasl under the public land laws;

(2) location, entry, and patent under the United States mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing.

SEC. 8. WILDERNESS DESIGNATION.

(a) DESIGNATION OF WILDERNESS.—That portion of the New Water Mountains Wilderness Study Area lying within the lands described in section 7 and certain portions of the adjacent Bureau of Land Management New Water Mountains Wilderness Study Area No. 02–125, all generally depicted on a map numbered AZ–ASO–0[illegible], dated September 9, 1988, are hereby designated as the New Water Mountains Wilderness and therefore, as a component of the National Wilderness Preservation System. Subject to valid existing rights, the New Water Mountains Wilderness shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act of 1964 governing areas designated by that Act as wilderness.

(b) RELEASE FROM WILDERNESS REVIEW.—That portion of the New Water Mountains Wilderness Study Area No. 02–125 not designated as wilderness by this Act—

(1) has been adequately studied from wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act (Public Law 94–579);

(2) is no longer subject to the requirement of section 603(c) of the Federal Land Policy and Management Act pertaining to the management of Wilderness Study Areas in a manner that does not impair the suitability of such areas for preservation as wilderness; and

(3) except as otherwise provided in this Act, shall be administered as public lands under the provisions of the Federal Land Policy and Management Act of 1976.

SEC. 9. ADDITION OF LANDS TO THE KOFA NATIONAL WILDLIFE REFUGE.

The following described Wilderness Study Areas administered by the Bureau of Land Management are hereby incorporated into and shall be managed as part of the Kofa National Wildlife Refuge:

(a) Kofa Unit 3 South Wilderness Study Area No. AZ–05–31, and the adjacent following described lands: The remaining portions of section 12, the S½ of section 26 and section 35, plus the SE¼ of section 27 and the E½ of section 34 all in T. 1S., R. 19 W., G&SRM, all as generally depicted on a map numbered AZ–020–06, subpart B; and

(b) Kofa Unit 4 North Wilderness Study Area No. AZ–05–33, as generally depicted on a map number AZ–020–06, subpart C.

SEC. 10. WITHDRAWALS FOR KOFA NATIONAL WILDLIFE REFUGE.

Subject to valid existing rights, all federally owned lands within the Kofa National Wildlife Refuge as of the date of enactment of this Act, (including those additions to the Kofa made pursuant to this Act), are hereby withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the United States mining law; and

(3) disposition under all laws pertaining to mineral and geothermal leasing.

SEC. 11. ADDITION OF LANDS TO THE CABEZA PRIETA NATIONAL WILDLIFE REFUGE.

(a) NATIONAL WILDLIFE REFUGE.—The following public lands are hereby incorporated into and shall be managed as part of the Cabeza Prieta National Wildlife Refuge:

All lands within the unsurveyed T. 12 S., R. 17 and 18 W.; T. 13 S., R. 17 and 18 W.; and T. 14 S., R. 17 W.; all G&SRM, containing approximately 80,497 acres.

(b) MANAGEMENT.—The Secretary of the Interior and the Secretary of Defense shall enter into a memorandum of understanding subsequent to the passage of this Act. Such memorandum shall be effective no later than October 1, 1989. The memorandum shall define the management of the lands described in subsection (a) providing that such lands be managed pursuant to applicable sections of the Military Land Withdrawal Act of 1986 (Public Law 99–606) and Executive Order 8038 dated January 25, 1939 which established the Cabeza Prieta National Wildlife Refuge.

SEC. 12. REVOCATION OF RECLAMATION WITHDRAWALS.

(a) IN GENERAL.—Notwithstanding any other provision of law, in order to facilitate the transfer of certain Federal lands—

(1) Secretarial Orders dated January 31, 1903, September 8, 1903, June 4, 1930, and October 16, 1931, which withdrew lands from the Colorado River Storage Project and Executive Order 8647 dated January 22, 1941, and Public Land Order 4417 dated May 20, 1968, which withdrew lands for the Havasu National Wildlife Refuge, and Executive Order 8685 dated February 14, 1941, which withdrew lands for the Imperial National Wildlife Refuge are hereby revoked on the following described lands under the administration of the Fish and Wildlife Service:

Sec. 17. T. 5 S., R. 21 W.; portions of secs. 17, 20, 28, and 33, T. 14 N., R. 20 W.; portions of secs. 3 and 10, T. 16 N., R. 21 W.; and portions of secs. 21, 27, and 34, T. 17 N., R. 21 W.; all in G&SRM

The effective date of the revocation shall be the date of patent to the State of Arizona.

(2) Secretarial Orders dated July 2, 1902, and February 10, 1906 which withdrew certain lands in aid of the Salt River Project, are hereby revoked on the following described lands:

Lots 7, 9, 11, 13 through 15, and 17 through 29 of section 24, T. 2 N., R. 6 E., G&SRM.

The effective date of the revocation shall be the date of patent to the State of Arizona.

(b) PATENTS.—The following stipulations shall be included in all patents issued by the Secretary of the Interior for the lands described in subsection (a)(2):

(1) Excepting and reserving to the Salt River Project, a right-of-way for electric transmission and distribution lines and access purposes which shall comprise that portion of the east 300 feet of section 24, lying west of a line extending northerly from a point on the south section line of section 24, being 51 feet west of the southeast corner of section 24 to a point on the north section line of section 24, being 129 feet west of the northeast corner of section 24, as generally depicted on the Salt River Project drawing number C–675–439.88, dated June 1988;

(2) The United States and the Salt River Project shall not be liable whatsoever for damages to any lands conveyed herein, which may be caused by flooding in conjunction with any of the United States' or Salt River Project's existing or future facilities or protective works;

(3) The patentee, successors or assigns of the lands conveyed herein shall be held liable to the United States or the Salt River Project for damages caused by the holder's activities which alter drainage and adversely affect adjacent lands, project facilities or protective works of the United States or the Salt River Project; and

(4) Reserving to the United States a right of way for road purposes, as described in Bureau of Land Management A.R. 020234.

SEC. 13. ADJUSTMENT OF CORONADO NATIONAL FOREST BOUNDARY.

(a) MODIFICATION OF PROCLAMATION 1121.—Proclamation 1121, dated April 17, 1911, which established the Coronado National Forest boundary as it related to Township 21 South, Range 18 East, G&SRM, is hereby modified to delete sections 27 and 28, which are not under the jurisdiction of the Forest Service, from inclusion within the National Forest System.

(b) MODIFICATION OF PROCLAMATION DATED JULY 19, 1907.—The proclamation dated July 19, 1907, which established the Coronado National Forest boundary as it is related to Township 15 South, Range 17 East, Gila and Salt River Meridian, is hereby modified to delete sections 9, 10, 15 and 22, which are not under the jurisdiction of the Forest Service, from inclusion within the National Forest System.

SEC. 14. AUTHORIZATION.

(a) GENERAL APPROPRIATION.—There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(b) PERSONNEL.—There are hereby authorized to be appropriated such sums as are necessary to provide for at least 10 and more, if necessary, full-time equivalent employees of the Bureau of Land Management to perform resource management and law enforcement activities as a part of the administration of the Bureau of Land Management lands in Black Canyon Corridor and those lands described in section 7(a) of this Act.

PURPOSE OF THE MEASURE

S. 2352, would authorize a series of exchanges and conveyances between various Federal and Arizona State agencies and revoke certain Secretarial orders and withdrawals on selected Federal lands to facilitate these and other exchanges.

BACKGROUND AND NEED

For several years, Federal and State land managing agencies in Arizona have wrestled with a number of inter-related land management problems within the State. Of particular concern is the escalation of lease payments on State trust lands in Catalina State Park. The Arizona State Parks Board leases the State trust lands in the park from the Arizona State Land Department, based on fair market value of those lands. Current interpretation of Arizona's constitution requires that trust lands return the highest possible income to the State for use by public schools and road programs. Commercial development in the area of Catalina State Park has increased dramatically, and consequently, the lease payments to the State trust from the Arizona State Park Department have been raised significantly to reflect the fair market value of the surrounding area.

Paying the annual fees for Catalina State Park has become prohibitive for the Arizona State Parks Board, and concerns have arisen over the future of what many consider to be one of the State's finest parks. Rich in both history and natural features, the park includes foothills, canyons and streams ranging in elevation from 2,650 feet to 3,000 feet. Nearly 150 species of birds are found there, as well as deer, javalina and other wildlife.

The problem with escalating fees has also occurred at the Buenos Aires National Wildlife Refuge. Annual lease payments due the State from the Fish and Wildlife Service for more than 80,000 acres of State trust land within the refuge are expected to increase from $90,197 in 1988 to $541,185 in 1996.

Another land management problem in the State stems from the Fish and Wildlife Service's management of a utility corridor through the Kofa National Wildlife Refuge. The Kofa "Game Range" was originally established in 1939 primarily for the conservation and protection of the desert bighorn sheep and its ecosystem. The 660,000 acre refuge is also home to over 161 species of birds, 30 species of mammals and 46 species of reptiles and amphibians.

During the late 1970's, controversy arose regarding a proposal for a high-voltage power line which would cross the northern portion of the refuge, and carry electric power from Arizona to California. Eventually the line was approved by the Department of the Interior and constructed.

Recently, a proposal has been made to construct another 500,000 volt power line parallel to the first, across 36 miles in the northern part of the Kofa refuge. It would be part of a 238-mile power line from the Palo Verde Nuclear Generating Station west of Phoenix to a substation near Palm Springs, California.

The Fish and Wildlife Service has been faced with difficult management problems as it seeks to balance its mandate to protect and conserve the Kofa's wildlife and wildlife habitat with the maintenance of a utility corridor through the north portion of the refuge. The Fish and Wildlife Service anticipates that these problems would be exacerbated by the addition of another power line through the area.

Federal and State land management agencies have also been concerned with a number of smaller exchanges involving federal lands in Arizona, which have been held up by the injunction issued in the National Wildlife Federation lawsuit, *National wildlife Federation* v. *Burford, et al.*, 835 F.2d 305 (D.C. Cir. 1987) which enjoins the Secretary from revoking certain withdrawals until the case is resolved. Another unresolved issue centers around the 12,000 acre federal debt remaining from the acquisition of State lands for the Central Arizona Project.

S. 2352 would attempt to resolve these and other land management issues by authorizing several exchanges and conveyances between a number of Federal and State agencies. The measure would also revoke secretarial orders and withdrawals on selected federal lands to facilitate other exchanges.

Legislative History

S. 2352 was introduced by Senators DeConcini and McCain on April 29, 1988. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 2352 on August 4, 1988.

At the business meeting on Thursday, September 15, 1988, the Senate Committee on Energy and Natural Resources ordered S. 2352, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 15, 1988, by a majority vote of a quorum present, recommends that the Senate pass S. 2352 if amended, as described herein.

The rollcall vote on reporting the measure was 17 yeas, 1 nay, as follows:

YEAS	NAYS
Mr. Johnston	Mr. Bradley [1]
Mr. Bumpers	
Mr. Ford [1]	
Mr. Melcher	
Mr. Bingaman [1]	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield	
Mr. Weicker [1]	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski [1]	
Mr. Nickles [1]	
Mr. Hecht	
Mr. Evans	

[1] Indicates voted by proxy.

COMMITTEE AMENDMENTS

During consideration of S. 2352, the Committee adopted an amendment in the nature of a substitute. The substitute made a number of technical and substantive changes to the bill as introduced.

DELETION OF KOFA ADDITION

The substitute removes language in section 9 of the original bill that would have added Kofa Unit 4 South, (consisting of 7,220 acres) currently managed by the Bureau of Land Management, to the Kofa National Wildlife Refuge. The substitute retains language which would add to the Kofa two other parcels under the management of the Bureau of Land Management.

ADDITIONAL ACQUISITION AUTHORITY

The Committee included a provision granting the Secretary of the Interior additional authority to acquire the State Trust lands identified in Section 3 of the bill, through purchase or eminent domain. The Committee included this language at the request of the Arizona State Land Commissioner. A recent Arizona Supreme Court ruling in *Deer Valley Unified School District* v. *the State of Arizona, Land Commissioner;* No. CV 86-0577-T, June 20, 1988, has created some uncertainty over whether or not Federal-state land exchanges are consistent with Arizona's Constitution. In order to ensure that the acquisitions contemplated by this Act are completed, the Committee agreed to include the additional authority requesed by the State of Arizona.

MEMORANDUM OF UNDERSTANDING

The substitute added language directing the Secretary of the Interior and the Secretary of Defense to enter into a memorandum of understanding to define the management of the area known as the Tinajas Atlas, which is a part of the Barry M. Goldwater Range, and would be added to the Cabeza Prieta Wildlife Refuge. The management outlined in the memorandum of understanding would be in accordance with applicable provisions of the Military Lands Withdrawal Act of 1986 and the Executive Order which established the refuge.

A more detailed description of the substitute is found in the "Section-By-Section Analysis" section of this report.

SECTION-BY-SECTION ANALYSIS

Section 1 of S. 2352 would provide a short title for the Act, the "Santa Rita Public Lands Exchange Act of 1988."

Section 2 directs the Secretary of the Interior to convey a portion of the Santa Rita Experiment Station to the State of Arizona to satisfy the federal debt remaining from the acquisition of state lands for the Central Arizona Project. A map, which depicts the entire Santa Rita Experiment Station, is referenced.

Section 3(a) directs the Secretary to utilize the Federal lands remaining in the Santa Rita Experiment Station after the conveyance described in Section 2, to acquire, through exchange, State lands with Catalina State Park, Buenos Aires National Wildlife Refuge, the Black Canyon Corridor, Arivaca Lake, the Madera-Elephant Head Trail area, and near Lake Pleasant.

Section 3(b) gives the Secretary the authority to acquire the State lands described in Section 3(a) by purchase or eminent domain to the extent that he determines is appropriate. A recent Arizona Supreme Court ruling in the *Deer Valley Unified School District* v. *the State of Arizona, Land Commissions,* No. CV 86-0577-T, June 20, 1988, has created some uncertainty over whether or not Federal-state land exchange are consistent with Arizona's Constitution. In order to ensure that the acquisitions contemplated by this Act are completed, this additional acquisition authority has been included.

Section 3(c) directs that the State lands within the Buenos Aires National Wildlife Refuge that are acquired pursuant to this Act will be added to the National Wildlife Refuge System and managed in accordance with appropriate law.

Section 3(d) directs that State lands acquired pursuant to this Act near Lake Pleasant and within the Black Canyon Corridor shall be administered by the Bureau of Land Management in accordance with applicable law.

Section 4 requires that State lands acquired in the Catalina State Park, Madera-Elephant Head Trail and the Arivaca Lake area would be included in the National Forest System. The Catalina State Park lands would be managed cooperatively with the Arizona State Park Department under National Forest System authorities and would be withdrawn from all forms of entry, disposal or appropriation under the public land laws, location entry and patent

under the mining laws; and from disposition under the mineral and geothermal leasing laws.

Section 5 would revoke Executive Order 1222 and Public Land Order 1363, which withdrew the Santa Rita Experimental Range for a Forest and Range Experiment Station, effective on the date of enactment for lands lying within the National Forest System, or on the date of transfer or patent to the State of Arizona for lands outside the National Forest System.

Section 6 would withdraw, for research purposes, approximately 751.04 acres within the Coronado National Forest from all forms of entry, disposal or appropriation under the public land laws; location, entry and patent under the mining laws; and from disposition under the mineral and geothermal leasing laws. These lands would be designated for use as a Forest and Range Experiment Station administrative headquarters site.

Section 7 revokes, for approximately 42,770 acres of the Kofa National Wildlife Refuge, Executive Order 8039 and Public Land Order 5637, which established the refuge. Subsection 7(b) provides that with respect to those lands, only uses that would conserve, protect and enhance the bighorn sheep and other wildlife and plant species shall be permitted. Section 7(c) provides that administration of these lands would be under Bureau of Land Management jurisdiction where consistent with the provisions of Section 7(b). Section 7(d) would withdraw these lands from all forms of entry, disposal or appropriation under the public land laws; location, entry and patent under the mining laws; and from disposition udner the mineral, and geothermal leasing laws, subject to valid, existing rights.

Section 8(a) would designate the New Water Mountains Wilderness Area, which, subject to valid existing rights, would be administered in accordance with provisions of the Wilderness Act of 1964. Under Section 8(b), portions of the New Water Mountain Wilderness Study Area No. 02-125, not designated by Section 8(b) as wilderness, would be determined to have been adequately studied under section 603 of Federal Land Policy Management Act, (FLPMA), and would no longer be subject to its provisions. These lands would be administered as public land under the provisions of FLPMA.

The Committee did not include any language with respect to whether or not to reserve any water rights for the wilderness area because the Committee understands that there are no water resources appurtenant to the area. On that basis a decision either to expressly reserve a water right or a decision to deny either express or implied water rights would be a meaningless exercise amounting to the same thing. Accordingly, the Committee did not include any language on this issue in this measure.

Section 9 would add approximately 6,840 acres of land currently administered by the Bureau of Land Management to the Kofa National Wildlife Refuge. The original bill included additions to the Kofa of approximately 18,060 acres of Bureau of Land Management Land.

Section 10 would withdraw all lands in the Kofa National Wildlife Refuge, (including additions made in this Act) from all forms of entry, disposal or appropriation under the public land laws; location, entry and patent under the mining laws; and from disposition

under the mineral, and geothermal leasing laws, subject to valid, existing rights.

Section 11 would add 80,497 acres of Federal land to the Cabeza Prieta National Wildlife Refuge, to be managed in accordance with applicable provisions of the Military Lands Withdrawal Act of 1986 and E.O. 8038 as outlined in a memorandum of understanding between the Secretary of the Interior and the Secretary of Defense.

Section 12 would revoke certain portions of reclamation withdrawals establishing the Colorado River storage project, and the Havasu and Imperial National Wildlife Refuge. Further, section 12(a) would revoke Secretarial Orders withdrawing certain lands in aid of the Salt River Project.

Section 13 would modify the Coronado National Forest boundary, to delete two sections of land that are no longer under Forest Service jurisdiction from inclusion in the National Forest System.

Section 14 would authorize such appropriations as necessary to carry out the provisions of the Act and such appropriations as are necessary to increase Bureau of Land Management staffing to carry out the administration of the Bureau of Land Management lands in Black Canyon Corridor and those lands deleted from the Kofa National Wildlife Refuge pursuant to this Act.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 23, 1988.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2352, the Santa Rita Public Lands Exchange Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum,
Acting Director.

Congressional Budget Office Cost Estimate

September 23, 1988

1. Bill number: S. 2352.
2. Bill title: The Santa Rita Public Lands Exchange Act of 1988.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources on September 15, 1988.
4. Bill purpose: S. 2352 would authorize the appropriation of such sums as may be necessary to carry out a number of land conveyances and exchanges in the State of Arizona and to hire at least 10 additional employees of the Bureau of Land Management (BLM). The bill would authorize the conveyance of approximately 51,000 acres of federal land to the State of Arizona to satisfy the remain-

ing debt for lands the state gave the federal government for the Central Arizona water project early this century. Approximately 3,000 acres of other federal land would also be authorized to be exchanged for approximately 187,000 acres of state lands. The Secretary of the Interior would be granted the authority to acquire these lands by purchase or condemnation, if necessary. The newly acquired lands would be managed by the BLM, the Fish and Wildlife Service (FWS), the Forest Service (FS) and the Bureau of Reclamation (BOR).

S. 2352 would also transfer the management of approximately 43,000 acres of land from the FWS to the BLM and would add about 87,000 acres of land to the FWS administration.

5. Estimated cost of the Federal Government:

[By fiscal year, in million of dollars]

	1989	1990	1991	1992	1993
Estimated authorization level	0.3	0.3	0.3	0.4	0.4
Estimated outlays	.3	.3	.3	.4	.4

The costs of this bill fall within budget function 300.

Basis of estimate: In preparing this estimate, CBO assumed that S. 2352 would be enacted early in fiscal year 1989 and that amounts sufficient to cover the activities authorized in the bill would be appropriated beginning that year. Based on information from the agencies involved, we estimate that administrative costs resulting from the exchanges and new management activities authorized would not be significant. Costs to hire at least ten additional BLM employees as authorized are estimated to total $0.3 million to $0.4 million annually over the 1989–1983 period. We also except that all land acquisition would be accomplished through exchanges so that land purchases and condemnation would not be necessary.

6. Estimated cost to State and local government: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Theresa Gullo.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2352. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2352, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 2352 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 15, 1988.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for the Administration's views on S. 2352, the proposed "Santa Rita Public Lands Exchange Act of 1988."

The Administration recommends enactment of S. 2352 if the amendments discussed in this report are included in the bill.

S. 2352 would provide for a series of land transfers and administrative actions affecting lands under the jurisdiction of the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the Bureau of Reclamation in the Department of the Interior; the U.S. Forest Service in the Department of Agriculture; and the State of Arizona. These would include, among others, transfer of the Santa Rita Experimental Range to the State of Arizona; repayment, through the exchanges authorized, of the debt to the State of Arizona for lands taken by the Bureau of Reclamation for the Central Arizona Project; tranfer of administration of Federal lands in the Kofa and Cabeza Prieta National Wildlife Refuges; addition of lands to the Bureau of Land Management's Black Canyon Corridor and Lake Pleasant areas, the Coronado National Forest, and the Buenos Aires National Wildlife Refuge; designation of the New Water Mountains Wilderness Area; and other actions affecting certain Reclamation and National Forest lands. A more detailed summary of the provisions of the bill is enclosed. Also enclosed are several amendments that we strongly recommend that the Committee adopt.

We believe that S. 2352, if amended, would enable the involved Federal and State agencies to better accomplish their goals and provide future public benefits in areas of research, recreation, economic growth and development, wildlife, cultural, and water and land related programs. The Santa Rita exchange has been formulated for the ultimate purpose of providing opportunities for more efficient management of lands administered by each agency while benefiting, to the maximum extent possible, the resources of those lands.

In this regard, we emphasize that each element of this exchange proposal is an integral part of the conceptual whole and that all are interlinked in effect. Each has been selected for its contribution to benefit the resource goals of the management agency concerned and the overall conservation of lands and natural resources in Arizona. Particularly important to the success of this proposal is the section providing for adjustment of the northern portion of the Kofa National Wildlife Refuge so that management of the energy corridor there can be transferred from the Fish and Wildlife Serv-

ice to the Bureau of Land Management; any legislation enacted without such a section would be unacceptable.

Lands transferred to the State to satisfy the remaining Federal debt will be appraised at market value and be equal to the value of State lands relinquished for the Central Arizona Project. All remaining acquisitions will be made for equal value in accordance with the exchange provisions of the Federal Land Policy and Management Act. This provision has been recognized by the State in section 1(D) of State Senate Bill 1249, which was signed into law by Governor Mofford on May 12, 1988. Any restrictions that would limit the appraised value of exchanged lands will be included as restrictions in conveyed patents.

In accomplishing such exchanges, we will be required to appraise the Santa Rita lands at fair market value based on their highest and best use, using comparable sales in the vicinity. Therefore, some of the lands may be appraised as if they were going to be developed, while others may be appraised as if they were going to be used for ranching or other purposes. It is our understanding that the State is aware of this method and agrees with it. Any restrictions that would limit the appraised value of exchanged lands will be included as restrictions in conveyed patents.

Our Solicitor's Office has pointed out that the Arizona Supreme Court thas held that under the Arizona Constitution state school trust lands can only be disposed of by public auction following appraisal. We understand that the Arizona Attorney General's Office is reviewing the provisions of S. 2352 in order to determine whether the State has the authority to enter into the proposed land exchanges. Obviously, if this bill is enacted into law and it is determined that Arizona cannot convey the State lands specified by S. 2352 for exchange, no Federal lands will be conveyed to Arizona pursuant to S. 2352.

We note that S. 2352 would authorize appropriation of such sums as may be necessary to carry out the Act, along with such sums as may be necessary to provide for at least 10 full-time equivalent employees of the Bureau of Land Management to administer the exchanged lands. The acquisitions proposed in the bill lie in or adjacent to areas where the Bureau now has a management presence and are designed, in part, to improve existing management activities and consolidated lands. Additional funds and FTEs are not needed to adequately manage these lands. Thus, we strongly oppose any provision for additional funds or employees.

The benefits of most of the major provisions of the bill, and our objections to some, are discussed in more detail below.

Santa Rita Experimental Range

Under the bill, the 51,000-acre Santa Rita Experimental Range south of Tucson would be transferred to the Arizona State Land Department. The area would continue to be managed by the University of Arizona for ecological and range research. This and certain other transfers under the bill would be in repayment to the State of Arizona for the remaining debt for 12,000 acres of State trust land taken south of Tangerine Road for the Central Arizona Project (CAP) canal and for the New Waddell Dam by the Bureau of Reclamation, as well as for acquiring State trust lands within

the Buenos Aires National Wildlife Refuge and the Catalina State Park. These lands would be transferred to the U.S. Fish and Wildlife Service and the Forest Service, respectively. The Catalina State Park, however, would continue to be managed as a State park under a cooperative agreement between Arizona State Parks Department and the Secretary of Agriculture.

In addition, 60,000 acres of State trust land on Perry Mesa, which lies within the Black Canyon Corridor, would be transferred to the Bureau to manage the outstanding remains of Pueblos dating from 1200–1400 A.D. and other multiple use values. Under State Trust administration, these resources would not receive the protection they will receive under Federal administration. Transfer of an additional 16,000 acres of land north of Lake Pleasant to the Bureau for multiple resource management and expansion of the regional park surrounding Lake Pleasant would consolidate ownerships which are now intermingled and make the area easier to manage. The Forest Service would acquire from the State 520 acres at Madera-Elephant Head Trail and 1,350 acres at Arivaca Lake.

Buenos Aires National Wildlife Refuge

One of the important benefits to be derived from this exchange is the complete elimination of land management and fiscal constraints on the Buenos Aires National Wildlife Refuge caused by State-owned lands, lands lying within Refuge boundaries and leased by the Service.

The Buenos Aires Refuge is faced with prohibitively high lease payments for State-owned lands within its boundaries. Over the 10-year lease period, lease payments are scheduled to increase annually from $90,197 in 1988, to $541,185 in 1996. This increase from the original lease of approximately $20,000 per year at the time of the Refuge's establishment has a crippling effect on the operating budget of the Refuge, and has resulted in the restriction of the budgets of all refuges in Arizona as funds are taken from them to help pay the Buenos Aires lease costs. The increase has arisen from reclassification of the lands by the Arizona State Land Department from grazing to commercial with a concomitant increase in estimated value.

At the time of purchase of the Buenos Aires Ranch and establishment of the Refuge, the U.S. Fish and Wildlife Service included the grazing leases on State lands in order to acquire control of grazing on habitat of the endangered masked bobwhite quail. Because historic poor grazing practices were the major reason for habitat degradation and the decline of the bobwhite throughout its range, control of such land use was and still is a major management action in the recovery effort for the masked bobwhite. It was not until after these leases had been transferred to the Service that they were reclassified to commercial, and anticipated operation and management costs associated with them rose from $20,000 to the current $90,197 and anticipated $541,185 at the end of the 10-year lease.

These State-owned acres are integral to the operation of the Refuge. Comprising over 80 percent of the total Refuge area, the State lands buffer the riparian areas comprising the majority of the watershed and provide potential habitat for the masked bob-

white. To remove these lands from the Buenos Aires Refuge would leave only disjunct parcels of lands remaining and would effectively negate any opportunity for protection and management of the grassland ecosystem. Should only the fee lands be retained and managed as the Buenos Aires Refuge, it is possible that a small population of the masked bobwhite may be produced. However, without the capability of using the lands now owned by the State within Refuge boundaries, it is highly improbable that the major goal for this species—its full recovery and removal from the list of endangered species—would ever be attained. To limit the masked bobwhite only to fee lands would render it vulnerable to land use practices occurring on State lands over which the Service would have no control. These lands should accordingly be retained within Refuge boundaries and should be retained as Federal lands, not State-leased tracts. The most effective method of accomplishing this retention is through the complete exchange of lands between the Bureau of Land Management and the Arizona State Land Department proposed in this bill.

Kofa National Wildlife Refuge

The bill would resolve a Federal management problem by moving the boundary of the Kofa Wildlife Refuge south of an existing energy corridor. The lands north of this new boundary, 42,770 acres, would be managed by the Bureau of Land Management for their wilderness, wildlife and energy corridor values. As noted above, this provision is vital to the success of this proposal. We note that the legal descriptions provided in S. 2352 should be amended as recommended in our enclosure. These new descriptions are the result of on-site proofing of the existing pipeline and transmission line rights-of-way by staff from the Bureau and Kofa Refuge.

The management of natural resource values would remain essentially unchanged. The Bureau is committed to managing as proposed wilderness the same area that was proposed for wilderness designation by the service in 1974. The Bureau would also be charged with managing the lands removed from the Refuge in a manner, "which will conserve, protect, and enhance the bighorn sheep and other wildlife and plant species" on those lands. The utility corridor has been in existence for more than forty years and its continuation is urgent and vital. Research, to date, has not shown the existing 500 kilovolt (kV) line to be a hindrance to desert big horn sheep. In addition, the Bureau would assume full responsibility for the utility corridor crossing southern California and Arizona and providing passage for the existing 500 kV electrical transmission line and four natural gas pipelines. The Bureau already administers the segments of this corridor lying to the east and west of the Refuge and the transfer of the Kofa segment to the Bureau would link the two outlying portions. Given that under the proposed legislation the natural resources of concern to the Service would not be put at risk through the transfer, and given that the Bureau is already responsible for the utility corridor on all lands but the Kofa Refuge, the demarcation of the boundary between Service and Bureau administrative jurisdictions is most logically located at the corridor itself.

Three parcels of land totaling over 18,000 acres lying immediately west of Kofa Refuge's western boundary would be included within the Refuge under S. 2352. Two of these tracts have been under Service application for withdrawal from the public domain since 1974. The inclusion of all three areas would render the western boundary of the Refuge more manageable with regard to topography and both natural and man-made barriers. The Service would be able to provide more direct management than the Bureau due to proximity of Refuge staff.

Cabeza Prieta National Wildlife Refuge

S. 2352 would provide for the inclusion of the 80,497-acre area known as the Tinajas Altas within the Cabeza Prieta Refuge. In 1986, the Military Lands Withdrawal Act of 1986 (P. 99–606) transferred administration of the surface resources to the Bureau of Land Management. The Bureau currently is in the process of completing a management plan and resolving management issues on the Barry M. Goldwater Range, which includes the Tinajas Altas area. Transfer of administration would enhance long-term management and ease of access.

Transfer of the Tinajas Altas could be accomplished administratively through application for withdrawal. Indeed, the Service has had such an application pending on the Tinajas Altas since 1974. Inclusion in this exchange bill provides a more direct and effective method of transfer from the Bureau to the Service.

We do recommend that section 10(b) be amended to clarify the manner in which the Tinajas Altas is managed. As with the lands that now comprise the Cabeza Prieta Refuge and are already overlain by the military withdrawal, the Tinajas Altas, as part of the Cabeza Prieta would be "managed pursuant to the National Wildlife Refuge System Administration Act of 1966" permitting "protection of wildlife and wildlife habitat." Our proposed amendment would specifically state that management and use of the area would be governed by a new memorandum of understanding (MOU) between this Department and Departments of the Air Force and Navy.

The U.S. Marine Corps now operates over the existing lands of the Refuge through an existing interagency MOU. The development of a separate, additional MOU for the Tinajas Altas is essential to ensure that the area is successfully administered as part of the Refuge and that necessary military activities on or above the lands are accommodated.

Whether the area is administered by the Bureau under a management plan developed under the Military Lands Withdrawal Act or by the Service under this legislation, two major issues would be addressed: minimum levels above ground for air maneuvers; and specific locations and conditions for surface activities. Under administration by either agency, new requirements, such as regulation of off-road travel, exclosure areas delineated for sensitive sites, and scheduling of air and ground activities to avoid distrubance to wildlife species will be necessary to adequately protect and manage the surface resources of the Tinajas Altas. However, we believe that even with these new restrictions, most of the military oper-

ations that have historically occurred on the area will be able to continue.

Havasu and Imperial National Wildlife Refuges

S. 2352 would provide for the revocation of withdrawals by the Bureau of Reclamation of certain lands, totaling 2,457 acres, within the Havasu and Imperial Refuges. These lands, originally acquired for the refuges through the withdrawals, have been determined to be in excess of refuge needs and more valuable for commercial development than for wildlife habitat preservation. The exchange lands at the Havasu Refuge are separated from the bulk of remaining Refuge lands by State Highway 95. Buffer areas have been included that protect the Refuge wetlands at Topock Marsh from encroachment by development of the exchanged uplands. The section of land to be exchanged at the Imperial Refuge lies outside the main boundary of the Refuge and is separated by State lands from the Refuge. Therefore, its transfer to the State is considered a more viable management action than retention in and management as part of the Imperial Refuge. These Federal lands will be used to acquire State lands within the Buenos Aires Refuge.

Red Mountain Area

S. 2352 would provide for the transfer to the State of approximately 320 acres of Bureau of Reclamation withdrawn land in the Red Mountain area lying near the confluence of the Salt and Verde Rivers east of Phoenix. We note that the Bureau of Land Management and the Bureau of Reclamation have agreed that certain stipulations will be included in every patent issued on lands covered by section 11(2) of S. 2352 in order to protect the Salt River Project facilities on the Red Mountain Project. We have included an amendment to this section that corrects the land description.

New Water Mountains Wilderness

Under the bill, the New Water Mountains Wilderness would be desigated as a component of the National Wilderness Preservation System. This is currently a Fish and Wildlife Service and Bureau of Land Management Wilderness study area. As a designated wilderness, valuable resources will be protected.

Coronado National Forest

Finally, withdrawal of lands within the Coronado National Forest for use as an administrative site for the Rocky Mountain Forest and Range Experimental Station, and the University of Arizona would assure continuation of the site for use as an administrative site; addition of the 520-acre Madera-Elephant Head trailhead and the 1,350-acre Arivaca Lake properties to the Conronado National Forest in southern Arizona would assure access into the National Forest; and adjustment of the boundary of the Coronado National Forest adjoining the Appleton-Whittell Research Ranch would complete a 1962 Forest Service land action.

Conclusion

We believe that S. 2352, if amended as recommended, would incorporate all the elements necessary for a successful exchange that

will benefit Federal, State, local and many other interests. Elimination of any of its elements would vitiate the delicate balance on which the proposal is structured; enactment with our amendments would provide long-term natural resource benefits. We therefore recommend enactment of S. 2352 with the amendments we have suggested.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. STEVEN GRILES,
Assistant Secretary.

Enclosures.

SUMMARY OF PROVISIONS OF S. 2352

Section 1 of S. 2352 would provide a short title for the Act, the "Santa Rita Public Lands Exchange Act of 1988."

Section 2 would direct the Secretary of the Interior, acting through the Bureau of Land Management, to transfer or exchange with the State of Arizona, all lands in the Santa Rita Experimental Range lying outside the National Forest System, totaling approximately 50,810.94 acres.

Section 3 would direct that, to the extent possible, section 2 lands be used (1) to satisfy the Federal debt to the State for 12,000 acres of State lands taken for construction of the Central Arizona Project (CAP), and (2) to acquire certain State lands under the exchange provisions of the Federal Land Policy and Management Act (FLPMA). The section further provides that, notwithstanding any other provision of law, any lands exchanged pursuant to clause (1) would be required to be approximately equivalent in value.

Under section 4, lands acquired by exchange in the Catalina State Park and Madera-Elephant Head Trail would be included in the National Forest System. The Catalina State Park lands would be required to be managed cooperatively with the Arizona State Park Department under National Forest System authorities.

Section 5 would revoke Executive Order 1222 and Public Land Order 1363, which withdrew the Experimental Range, to be effective on the date of enactment for lands lying within the National Forest System and on the date of transfer or patent to the State of Arizona for lands outside the National Forest System.

Approximately 751.04 acres within the Coronado National Forest would be withdrawn from all forms of entry, including the Mining Law of 1872 but not the mineral leasing laws, by section 6. These lands would be designated for use as a Forest and Range Experiment Station administrative headquarters site. Under section 6(b), Public Land Order 1080 would be revoked as it relates to this forest administration site.

Executive Order 8039 and Public Land Order 5637 would be revoked by section 7 of S. 2352. These orders withdrew approximately 39,971.33 acres in the Kofa National Wildlife Refuge. Under section 7(b), the Secretary could allow only such use of the subject lands as would conserve, protect and enhance the bighorn sheep and other wildlife and plant species on the lands. Section 7(c) provides that

administration of the lands revoked by this section would be under Bureau of Land Management jurisdiction.

Section 8(a) would designate the New Water Mountains Wilderness Area which, subject to valid existing rights, would be administered in accordance with provisions of the Wilderness Act of 1964. Under section 8(b), portions of the New Water Mountains Wilderness Study Area No. 02-125, not designated by section 8(a) as wilderness, would be determined to have been adequately studied under section 603 of FLPMA, and would no longer be subject to its provisions. These lands would be administered as public land under the provisions of the FLPMA.

Approximately 16,520 acres of Bureau of Land Management administered lands would be added to the Kofa National Wildlife Refuge by section 9. Subject to valid existing rights, these lands would be withdrawn from operation of the public land laws, the mining laws, and the mineral and geothermal leasing laws.

Section 10 would add 80,497 acres of Federal land to the Cabeza Prieta National Wildlife Refuge, to be managed in accordance with applicable provisions of the Military Lands Withdrawal Act of 1986 and E.O. 8038.

Certain portions of reclamation withdrawals establishing the Colorado River storage project, and the Havasu and Imperial National Wildlife Refuge would be revoked by section 11(1). Further, section 11(2) would revoke Secretarial Orders withdrawing certain lands in aid of the Salt River Project.

Section 12 would modify the Coronado National Forest boundary, to delete two sections of land that are not under Forest Service jurisdiction from inclusion in the National Forest System.

Section 13 would authorize such appropriations and increased Bureau of Land Management staffing as are necessary to carry out the provisions of S. 2352.

Proposed Amendments to S. 2352

1. Section 2. The term "Santa Rita Experiment Station" should be amended to read "Santa Rita Experimental Range." This would make all references to the Range consistent.

2. Section 3(2). The reference to "section 1" probably should be changed to "clause 1 of this section." Section 1 merely gives the short title of the bill.

3. Section 7(a). In order that the entire existing energy corridor be removed from the Kofa National Wildlife Refuge, additional lands must be covered by the revocation. This section should be amended to read as follows:

> Secs. 1 through 18, N½NE¼ of Sec. 19; N½N½ and S½NE¼ of Sec. 20; N½ of Sec. 21; N½ of Sec. 22; and NW¼NW¼ of Sec. 23, T. 2 N., R. 15 W.; Secs. 1 through 12, N½, N½S½ and S½SE¼ of Sec. 13; N½ and N½SE¼ of Sec. 14; N½ of Sec. 15; N½ of Sec. 16; N½ and N½S¼ of Sec. 17; and N½ and N½S½ of Sec. 18; T. 2 N., R. 16 W.; Secs. 1 through 12, NE¼, E½NW¼, NW¼NW¼ and NE¼SE¼ of Sec. 13; NW¼ of Sec. 15; N½ of Sec. 16; N½, N½S½ and SW¼SW¼ of Sec. 17; and Sec. 18, T. 2 N., R. 17 W.; Secs. 1 through 14, N½, N½S½, SE¼SW¼ and

S½SE¼ of Sec. 15; N½, NE¼SW¼ and N½SE¼ of Sec. 16; N½ of Sec. 17, and Lot 1, N½NE¼ and NE¼NW¼ of Sec. 18, T. 2 N., R. 18 W.; all G&SRM.

4. Section 8(a). On page 5, line 16, insert the words "portions of" between the words "and" and "the".

5. Section 9(a)(1). We recommend this subsection be amended to add these tracts:

> The remaining portions of Section 12, S½ of Section 26, all of Section 35, SE¼ of Section 27, and the E½ of Section 34, all in T.1S., R. 19W., G&SRM.

Further, the acreate figure in section 9(a) should be changed to approximately 18,060 acres.

6. Section 10. In subsection (a), strike out "The" on page 7, line 21, and insert in lieu thereof "Effective January 1, 1990, the". On page 8, lines 1–6, strike out "subsection (b)" and insert in lieu thereof the following:

> (b) MANAGEMENT.—Effective January 1, 1990, the lands described in subsection (a) shall be managed in accordance with the Military Lands Withdrawal Act of 1986 (P.L. 99–606), Executive Order 8038, dated January 25, 1939, and any other applicable law or regulation. As of such effective date, management and use of such lands shall be governed by the memorandum of understanding herein prescribed. The provisions of the existing memorandum of understanding between the Department of the Interior and the Departments of the Air Force and Navy regarding military operations on the Cabeza Prieta National Wildlife Refuge in effect on March 24, 1975 shall not apply to the lands described in subsection (a). Military operations on or above these lands and refuge administration of these lands shall be conducted in accordance with a separate memorandum of understanding among the Departments of the Navy, Air Force, and Interior, which such agencies shall enter into. Such memorandum of understanding shall include provisions that * * *
>
> (1) allow ground activities associated with and necessary to aerial and air defense training maneuvers, to be limited to the minimum area consistent with the military mission and with timing and siting restrictions consistent with the protection of wildlife resources; and
>
> (2) specify that all military aircraft flying over the lands shall maintain a minimum altitude of at least 1,500 feet above ground level and shall allow low-level operations at specified times and places, consistent with the military mission and protection of wildlife resources.

7. Section 11(2). This section describes certain lands revoked by Secretarial Order. These tracts have been redesignated by a recent survey. In addition, the bill fails to include critical rights-of-way which should be reserved to the United States. The description in 11(2) should be amended to read:

(2) Secretarial Orders dated July 2, 1902 and February 10, 1906, which withdrew certain lands in aid of the Salt River Project, are hereby revoked on the following lands, effective on date of patent; Lots 7, 9, 11, 13 through 15, and 17 through 29 of Section 24, T. 2N., R.6E., G&SRM; Excepting and Reserving to the Salt River Project a right-of-way for electric transmission and distribution lines and access purposes across the above-described lands in the location as shown on the Salt River Project 1988.

8. Section 13. Delete this section in its entirety. The authorizations are unnecessary.

ADDITIONAL VIEWS OF MR. WIRTH

I believe that the Committee erred in agreeing to the provisions of this bill which transfer lands from the Kofa National Wildlife Refuge to the Bureau of Land Management. This transfer will remove wildlife habitats from the refuge that directly contribute to the purpose for which the refuge was created—the protection of bighorn sheep.

A far sounder course would have been to reject this provision and retain the curent, unified management of these habitats by the U.S. Fish and Wildlife Service.

As reported by the Committee, S. 2352 would remove 42,770 acres of bighorn habitat from the Kofa National Wildlife Refuge. This refuge was first established as a Game Range in 1939, by Executive Order. It was established primarily for the conservation and protection of the desert bighorn sheep and the ecosystems on which the sheep depend. The refuge contains about 50 percent of the *Ovis canadensis mexicana* subspecies of bighorn in Arizona. In addition, the refuge is home to 161 species of bird, 30 other mammal species, and 46 species of reptiles and amphibians. The Kora is also noted for the diversity of its flora, with more than 88 plant species.

Until 1975, Kofa and several other game ranges were jointly managed by the BLM and the Bureau of Sport Fisheries and Wildlife (the predecessor of the Fish and Wildlife Service). Congress then passed legislation giving exclusive jurisdiction to the Fish and Wildlife Service. The specific purpose of that legislation was to protect and enhance the wildlife values of these lands.

The Fish and Wildlife Service has made many improvements in the management of these lands for wildlife. The result is evident in the thriving bighorn sheep population there.

The bill reported by the Committee proposes a partial reversal of the Congressional decision to put wildlife first on the Kofa Refuge. The lands that would be transferred to BLM under the bill include lambing areas for sheep that spend fall and winter in the heart of the refuge. The Fish and Wildlife Service has long recognized the importance of the northern portion of the Kofa—where the deletion is made by the Committee bill—for the purposes of the refuge. In fact, in 1976 it was proposed not that the refuge be diminished on its northern border, but that it be expanded by 80,000 acres.

The initial motivation for including the deletion of lands from the refuge into this bill seems to have been a proposal for construction of a high-voltage transmission line. However, the sponsoring utility's application to the California Public Utilities Commission for this line has been rejected for lack of need. Even if it is resubmitted for the late 1990's, there will be ample time for environmental analysis of this and alternative routes. Many conservationists favor a route north of the refuge, parallelling the interstate highway.

Congress has never before legislated the removal of an area from a National Wildlife Refuge that was demonstrably related to the purposes for which the refuge was established. It would be particularly unfortunate to do so to facilitate a commercial enterprise for which there is no present need, and for which, should need occur, there are acceptable alternatives.

As Congressman Udall stated when introducing his version of this bill in the House, the Kofa deletion has no substantive relation to the other exchange proposals included in the Santa Rita Exchange Bill. The original purpose of this package was to ensure the acquisition of lands in the Buenos Aires National Wildlife Refuge and to secure the future of the Catalina State Park. The bill accomplishes those laudable goals admirably through a complicated series of exchanges between the federal government and the State of Arizona. These exchanges not only do not include the deletion of important wildlife habitat from the Kofa Refuge, but are totally independent and unrelated to that proposal.

In general, the Congress gives great deference to the delegation from the affected state on matters involving public lands in that state. These are public lands, however, held for the national interest, and in this case the Congress and the Executive have clearly set out that the highest and best use of the particular 42,770 acres here is as a National Wildlife Refuge. The primary benefits of the Santa Rita Exchange legislation for the people of Arizona and the nation can be realized without the provisions taking lands out of the Kofa Refuge, and it is my belief that such a course would far better serve the public interest than the bill as reported by the Committee.

TIMOTHY E. WIRTH.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2352, as reported.

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Calendar No. 1015

100TH CONGRESS
2d Session

SENATE

REPORT
100-559

FEDERAL CAVE RESOURCES PROTECTION ACT OF 1988

SEPTEMBER 28 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 1975]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1975) to protect cave resources on Federal lands, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be referred to as the "Federal Cave Resources Protection Act of 1988".

SEC. 2. FINDINGS, PURPOSES, AND POLICY.

(a) FINDINGS.—The Congress finds and declares that—

(1) significant caves on Federal lands are an invaluable and irreplaceable part of the Nation's natural heritage; and

(2) in some instances, these significant caves are threatened due to improper use, increased recreational demand, urban spread, and a lack of specific statutory protection.

(b) PURPOSES.—The purposes of this Act are—

(1) to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of all people; and

(2) to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, education, or recreational purposes.

(c) POLICY.—It is the policy of the United States that Federal lands be managed in a manner which protects and maintains, to the extent practical, significant caves.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) CAVE.—The term "cave" means any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface

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of the earth or within a cliff or ledge (including any cave resource therein, but not including any vug, mine, tunnel, aqueduct, or other man-made excavation) and which is large enough to permit an individual to enter, whether or not the entrance is naturally formed or man-made. Such term shall include any natural pit, sinkhole, or other feature which is an extension of the entrance.

(2) FEDERAL LANDS.—The term "Federal lands" means lands the fee title to which is owned by the United States and administered by the Secretary of Agriculture or the Secretary of the Interior.

(3) INDIAN LANDS.—The term "Indian lands" means lands of Indian tribes or Indian individuals which are either held in trust by the United States for the benefit of an Indian tribe or subject to a restriction against alienation imposed by the United States.

(4) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(5) CAVE RESOURCE.—The term "cave resource" includes any material or substance occurring naturally in caves on federal lands, such as animal life, plant life, paleontological deposits, sediments, minerals, speleogens, and speleothems.

(6) SECRETARY.—The term "Secretary" means the Secretary of Agriculture or the Secretary of the Interior, as appropriate.

(7) SPELEOTHEM.—The term "speleothem" means any natural mineral formation or deposit occurring in a cave or lava tube, including but not limited to any stalactite, stalagmite, helictite, cave flower, flowstone, concretion, drapery, rimstone, or formation of clay or mud.

(8) SPELEOGEN.—The term "speleogen" means relief features on the walls, ceiling, and floor of any cave or lava tube which are part of the surrounding bedrock, including but not limited to anastomoses, scallops, meander niches, petromorphs and rock pendants in solution caves and similar features unique to volcanic caves.

SEC. 4. MANAGEMENT ACTIONS.

(a) REGULATIONS.—Not later than nine months after the date of the enactment of this Act, the Secretary shall issue such regulations as he deems necessary to achieve the purposes of this Act. Regulations shall include, but not be limited to, criteria for the identification of significant caves. The Secretaries shall cooperate and consult with one another in preparation of the regulations. To the extent practical, regulations promulgated by the respective Secretaries should be similar.

(b) IN GENERAL.—The Secretary shall take such actions as may be necessary to further the purposes of this act. Those actions shall include (but need not be limited to)—

(1) identification of significant caves on federal lands;

(A) The Secretary shall prepare an initial list of significant caves for lands under his jurisdiction not later than one year after the publication of final regulations using the significance criteria defined in such regulations. Such a list shall be developed after consultation with appropriate private sector interests, including cavers.

(B) The initial list of significant caves shall be updated periodically, after consultation with appropriate private sector interests, including cavers. The Secretary shall prescribe by policy or regulation the requirements and process by which the initial list will be updated, including management measures to assure that caves under consideration for the list are protected during the period of consideration. Each cave recommended to the Secretary by interested groups for possible inclusion on the list of significant caves shall be considered by the Secretary according to the requirements prescribed pursuant to this paragraph, and shall be added to the list if the Secretary determines that the cave meets the criteria for significance as defined by the regulations.

(2) regulation or restriction of use of significant caves, as appropriate;

(3) entering into volunteer management agreements with persons of the scientific and recreational caving community; and

(4) appointment of appropriate advisory committees.

(c) PLANNING AND PUBLIC PARTICIPATION.—The Secretary shall—

(1) ensure that significant caves are considered in the preparation or implementation of any land management plan if the preparation or revision of the plan began after the enactment of this Act;

(2) foster communication, cooperation, and exchange of information between land managers, those who utilize caves, and the public.

SEC. 5. CONFIDENTIALITY OF INFORMATION CONCERNING NATURE AND LOCATION OF SIGNIFICANT CAVES.

(a) IN GENERAL.—Information concerning the specific location of any significant cave may not be made available to the public under section 552 of title 5, United States Code, unless the Secretary determines that disclosure of such information would further the purposes of this Act and would not create a substantial risk of harm, theft, or destruction of such cave.

(b) EXCEPTIONS.—Notwithstanding subsection (a), the Secretary may make available information regarding significant caves upon the written request by federal and state governmental agencies or bona fide educational and research institutions. Any such written request shall, at a minimum:

(1) describe the specific site or area for which information is sought;

(2) explain the purpose for which such information is sought; and

(3) include assurances satisfactory to the Secretary that adequate measures are being taken to protect the confidentiality of such information and to ensure the protection of the significant cave from destruction by vandalism and unauthorized use.

SEC. 6. COLLECTION AND REMOVAL FROM FEDERAL CAVES.

(a) PERMIT.—The Secretary is authorized to issue permits for the collection and removal of cave resources under such terms and conditions as the Secretary may impose, including the posting of bonds to insure compliance with the provisions of any permit.

(1) Any permit issued pursuant to this section shall include information concerning the time, scope, location, and specific purpose of the proposed collection, removal or associated activity, and the manner in which such collection, removal, or associated activity is to be performed must be provided.

(2) The Secretary may issue a permit pursuant this subsection only if he determines that the proposed collection or removal activities are consistent with the purposes of this Act and with other applicable provisions of law.

(b) REVOCATION OF PERMIT.—Any permit issued under this section shall be revoked by the Secretary upon a determination by the Secretary that the permittee has violated any provision of this Act, or has failed to comply with any other condition upon which the permit was issued. Any such permit shall be revoked by the Secretary upon assessment of a civil penalty against the permittee pursuant to section 8 or upon the permittee's conviction under section 7 of this Act. The Secretary may refuse to issue a permit under this section to any person who has violated any provision of this Act or who has failed to comply with any condition of a prior permit.

(c) TRANSFERABILITY OF PERMITS.—Permits issued under this act are not transferable.

(d) CAVE RESOURCES LOCATED ON INDIAN LANDS.—(1)(A) Upon application by an Indian tribe, the Secretary is authorized to delegate to the tribe all authority of the Secretary under this section with respect to issuing and enforcing permits for the collection or removal of any cave resource, or to carrying out activities associated with such collection or removal, from any cave resource located on the affected Indian lands.

(B) In the case of any permit issued by the Secretary for the collection or removal of any cave resource, or to carry out activities associated with such collection or removal, from any cave resource located on Indian lands (other than permits issued pursuant to subparagraph (A)), the permit may be issued only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such reasonable terms and conditions as may be requested by such Indian or Indian tribe.

(2) If the Secretary determines that issuance of a permit pursuant to this section may result in harm to, or destruction of, any religious or cultural site, the Secretary, prior to issuing such permit, shall notify any Indian tribe which may consider the site as having significant religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 5.

(3) A permit shall not be required under this section for the collection or removal of any cave resource located on Indian lands or activities associated with such collection, by the Indian or Indian tribe owning or having jurisdiction over such lands.

(e) EFFECT OF PERMIT.—No action specifically authorized by a permit under this section shall be treated as a violation of section 7.

SEC. 7. PROHIBITED ACTS AND CRIMINAL PENALTIES.

(a) PROHIBITED ACTS.—

(1) Any person who, without prior authorization from the Secretary knowingly destroys, disturbs, defaces, mars, alters, removes or harms any significant cave or alters the free movement of any animal or plant life into or out of any significant cave located on Federal lands, or enters a significant cave with the intention of committing any act described in this paragraph shall be punished in accordance with subsection (b).

(2) Any person who possesses, consumes, sells, barters or exchanges, or offers for sale, barter or exchange, any cave resource from a significant cave with knowledge or reason to know that such resource was removed from a significant cave located on Federal lands shall be punished in accordance with subsection (b).

(3) Any person who counsels, procures, solicits, or employs any other person to violate any provisions of this subsection shall be punished in accordance with subsection (b).

(4) Nothing in this section shall be deemed applicable to any person who was in lawful possession of a cave resource from a significant cave prior to the date of enactment of this Act.

(b) PUNISHMENT.—The punishment for violating any provision of subsection (a) shall be imprisonment of not more than one year or a fine in accordance with the applicable provisions of title 18 of the United States Code, or both. In the case of a second or subsequent violation, the punishment shall be imprisonment of not more than 3 years or a fine in accordance with the applicable provisions of title 18 of the United States Code, or both.

SEC. 8. CIVIL PENALTIES.

(a) ASSESSMENT.—(1) The Secretary may issue an order assessing a civil penalty against any person who violates any prohibition contained in this Act, any regulation promulgated pursuant to this act, or any permit issued under this Act. Before issuing such an order, the Secretary shall provide such person written notice and the opportunity to request a hearing on the record within 30 days. Each violation shall be a separate offense, even if such violations occurred at the same time.

(2) The amount of such civil penalty shall be determined by the Secretary taking into account appropriate factors, including (A) the seriousness of the violation; (B) the economic benefit (if any) resulting from the violation; (C) any history of such violations; and (D) such other matters as the Secretary deems appropriate. The maximum fine permissible under this section is $10,000.

(b) JUDICIAL REVIEW.—Any person aggrieved by an assessment of a civil penalty under this section may file a petition for judicial review of such assessment with the United States District Court for the District of Columbia or for the district in which the violation occurred. Such a petition shall be filed within the 30-day period beginning on the date the order assessing the civil penalty was issued.

(c) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(1) within 30 days after the order was issued under subsection (a), or

(2) if the order is appealed within such 30-day period, within 10 days after the court has entered a final judgment in favor of the Secretary under subsection (b),

the Secretary shall notify the Attorney General and the Attorney General shall bring a civil action in an appropriate United States district court to recover the amount of penalty assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the order was issued or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(d) SUBPOENAS.—The Secretary may issue subpoenas in connection with proceedings under this subsection compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) AUTHORIZATION.—There are authorized to be appropriated $100,000 to carry out the purposes of this Act.

(b) EFFECT ON LAND MANAGEMENT PLANS.—Nothing in this Act shall require the amendment or revision of any land management plan the preparation of which began prior to the enactment of this Act.

(c) FUND.—Any money collected by the United States as permit fees for collection and removal of cave resources; received by the United States as a result of the for-

feiture of a bond or other security by a permittee who does not comply with the requirements of such permit issued under section 7; or collected by the United States by way of civil penalties or criminal fines for violations of this Act shall be placed in a special fund in the Treasury. Such moneys shall be available for obligation or expenditure (to the extent provided for in advance in appropriation Acts) as determined by the Secretary for the improved management, benefit, repair, or restoration of significant caves located on Federal lands.

(d) Nothing in this Act shall be deemed to affect the full operation of the mining and mineral leasing laws of the United States, or otherwise affect valid existing rights.

SEC. 10. SAVINGS PROVISIONS.

(a) WATER.—Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act—

(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

(2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States; or

(3) alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

(b) FISH AND WILDLIFE.—Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the States with respect to fish and wildlife.

PURPOSE OF THE MEASURE

The purpose of H.R. 1975 is to provide authority to the Secretaries of the Interior and Agriculture regarding the management of significant caves located on Federal lands.

BACKGROUND AND NEED

Currently, there are approximately 40,000 known caves in the United States. A significant number of these caves are located on Federal lands, including over 4,200 caves on Bureau of Land Management and Forest Service lands alone.

Caves are defined as any naturally occurring cavities in the earth's surface which are large enough for human entry. They are considered by many as a unique, natural, non-renewable resource with important scientific, educational and scenic resources, including specialized mineral formations known as speleothems, and plants and animals which may have undergone adaptation to survive in a cave environment.

Concerns have been raised that vandalism, commercial exploitation and recreational abuse are causing damage and the loss of natural and cultural cave resources, and that present Federal law may be inadequate to comprehensively provide for the protection of cave resources. Caves located on public lands are currently managed under general land management statutes, but these laws neither expressly provide comprehensive authority for the management of cave resources, nor formally state a policy regarding cave resources on Federal lands.

H.R. 1975 would address these concerns by providing specific authority for the management of significant caves located on Federal lands.

Legislative History

H.R. 1975 passed the House of Representatives on March 29, 1988. A similar measure, S. 927, was introduced by Senator Daschle on April 7, 1987. A hearing was held on both measures by the Subcommittee on Public Lands, National Parks and Forests on June 16, 1988.

At the business meeting on Thursday, September 22, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 1975, as amended, favorably reported.

Committee Recommendations

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 22, 1988, by unanimous voice vote of a quorum present recommends that the Senate pass H.R. 1975 if amended, as described herein.

Committee Amendments

During the consideration of H.R. 1975, the Committee adopted an amendment in the nature of a substitute. The substitute included a number of substantive and technical changes. A more detailed description of those changes is found in the "Section-By-Section Analysis" portion of this report. The substantive changes are as follows:

Significant Caves

While H.R. 1975 gave authority to land managing agencies over the management of "caves" and "cave resources", the Committee substitute focuses management authority on those caves that the Secretary determines to be "significant".

This change in management emphasis responds to concerns by the Administration that the focus in the original bill was too broad. Specific provisions are included in the substitute that require the agencies to promulgate regulations, which, among other things, define the criteria for determining significance. The substitute also details the process by which an initial list of significant caves will be prepared and updated by each Secretary for the lands under his jurisdiction.

Integration With Other Resources

The substitute made changes which were designed to integrate the management of significant caves with the management of other resources on Federal lands. To that end, the policy statement was changed to reflect that significant caves on Federal lands will be managed, "to the extent possible," in a manner that will protect and maintain such caves. Language was also added to ensure that nothing in this Act would affect the full operation of mining and mineral leasing laws.

Water

The substitute also deleted specific references in the definition of cave and cave resource to subsurface water, drainage systems or hydrological features, and removed the prohibition on altering "the free movement" of any cave resource. In addition, a savings clause

was added to the measure which would provide that nothing in the Act be construed as authorizing the appropriation of water by any Federal, State, or local agency or any other entity.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that this Act may be referred to as the "Federal Cave Resources Protection Act of 1988."

Section 2 provides the findings of the Congress, defines the purposes of the Act and sets forth the policy that significant caves on Federal lands will be managed, to the extent possible, in a manner that will protect and maintain such caves.

Section 3 defines the terms that will be used for purposes of this Act.

Section 4 sets forth the management actions that are required pursuant to this Act.

Section 4(a) requires that the Secretary of the Interior or the Secretary of Agriculture, (hereinafter referred to as "the Secretary.") promulgate regulations to meet the purposes of this Act. Specifically, the regulations shall establish criteria for the identification of "significant" caves.

While the criteria may differ for each department due to different resources under its respective jurisdiction and differing management policies, it is expected that the two departments will consult in promulgating compatible criteria.

The interested public will be involved in the drafting of the criteria, pursuant to the Administrative Procedure Act. Each Secretary shall give advance notice to the interested public in developing the proposed criteria, prior to publication of the proposed rule. After the draft criteria is published, the interested public shall be given ample opportunity to provide comments to each Secretary. Such comments shall be considered by each Secretary in the development of the final criteria.

The Committee is concerned that efforts be made to protect significant cave resources as soon as possible after enactment of this Act, and that efforts not be delayed pending the issuance of regulations. Prior to the issuance of regulations and in consultation with the interested public, the Committee strongly recommends that the respective Secretaries take administrative action in the form of agency guidelines and policy directives to assure that caves already known to have important resources are managed in accordance with the purposes of this Act.

Section 4(b) requires that the Secretary take action he deems necessary to meet the purposes of the Act. Specifically, he is required to prepare an initial list of significant caves for lands under his jurisdiction using the significance criteria identified in the regulations, and to update the list periodically.

It is expected that the determination of significance for individual caves will be a matter involving public input. The interested public should be involved in the collection of data and the inventory of significant caves, and the analysis of such information, to the extent practicable. It is expected that knowledgeable speleologists will cooperate and make their knowledge available to the federal land managers as they prepare the list of significant caves.

Section 4(c) requires that the Secretary consider significant caves in the preparation or implementation of any land management plan begun after the enactment of this Act.

Section 5 provides the Secretary with the authority to withhold information regarding the specific location of a significant cave, unless the Secretary determines that such disclosure would further the purposes of the Act and would not create a substantial risk of harm to such cave. Certain exceptions are included for federal and state governmental agencies or bona fide educational and research institutions.

The prohibition on disclosure of information concerning the specific location of any significant cave is meant to protect significant caves from intrusion by those who might intentionally harm those caves or cave resources included therein. While the provisions would prohibit the Secretary form making available the specific location of any significant cave, the Committee understands that this provision would allow the Secretary to disclose general information regarding the location of significant caves, such as the State, county and township where these significant caves are located.

Section 6(a) allows the Secretary to issue permits for the collection or removal of cave resources and sets forth the circumstances under which such a permit may be granted.

Section 6(b) provides that a permit authorized under this Act shall be revoked for violations of the provisions of this Act.

Section 6(c) specifies that permits are not transferable.

Section 6(d) provides that upon application of an Indian tribe, the Secretary may delegate his authority for the issuing and administration of permits for any cave resource located on the Indian lands concerned. Permits issued by the Secretary must have the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The section also provides protection for religious or cultural sites. Further, a permit shall not be required of any Indian tribe or member thereof for activities within caves located on the lands of such tribe.

Section 6(e) provides that actions specifically authorized by a permit issued under this section shall not be treated as a violation of the provisions of this Act.

Section 7 establishes criminal penalties for destroying or disturbing significant caves, interfering with the free movement of any animal or plant life in or out of a cave, or soliciting any person to commit such act in violation with the provisions of this Act. The section provides that punishment for such violations shall be in accordance with title 18, United States Code.

Section 8 provides for civil penalties for violations of the prohibitions contained in the Act and contains procedures for administrative and judicial review of violations.

Section 9 authorizes $100,000 to carry out the purposes of this Act. It also provides that any monies collected from permit fees, the forfeiture of bond or other security or the collection of civil penalties or criminal fines for violations of this Act will be placed in a special fund in the Treasury and be available for obligation or expenditure as provided in appropriations Acts for the benefit of significant caves on federal lands. Section 9 also provides that

nothing in this Act will affect the full operation of mining and mineral leasing laws.

Section 10 sets forth saving clauses relating to water and fish and wildlife.

Section 10(a) directs that nothing in the Act be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual.

Section 10(b) directs that nothing in the Act be construed to affect the jurisdiction or responsibility of the States with regard to fish and wildlife.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1975, the Federal Cave Resources Protection Act of 1988, as ordered reported by the Senate Committee on Energy and Natural Resources on September 22, 1988.

H.R. 1975 would require the Departments of the Interior (DOI) and Agriculture (USDA) to regulate and manage the use of federal cave resources. Caves located on federal lands would have to be managed in accordance with regulations to be developed within nine months of the act's passage, and would have to be specifically considered in future land management and planning activities. DOI and USDA would also be required to compile a list of significant caves within one year of the issuance of final regulations. Under certain conditions, this act would allow the DOI and USDA to withhold from the public information on the location and nature of federal caves. The act would also establish a permit process for the collection and removal of natural resources from federal caves and would provide civil and criminal penalties for violations of this act.

H.R. 1975 would authorize the appropriation of $100,000 to carry out the provisions of this act. Finally, the act would establish a cave management fund to be derived from monies collected from cave permit fees, bond forfeitures and fines. The fund would also be available, subject to appropriations, for the management for the management of federal cave resources.

Based on information from the DOI and USDA, CBO estimates that enactment of this act would result in additional federal outlays totaling $100,000 in 1989 to promulgate regulations and compile the list of significant caves.

No costs would be incurred by state or local governments as a result of enactment of this legislation.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can by reached at 226–2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1975. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1975, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of Agriculture setting forth executive agency recommendations relating to S. 927, the Senate companion to H.R. 1975 is set forth below.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, November 24, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 927, a bill "To protect cave resources on Federal lands, and for other purposes."

The Department of Agriculture would not object to the enactment of S. 927, if amended as suggested herein.

S. 927 would establish specific requirements for the regulation and management of caves found on Federal lands; ensure that Federal caves are considered in land management planning activities; and foster communication, cooperation, and exchange of information among land managers, cave users, and the public. The bill would permit the withholding of information under the Freedom of Information Act to protect cave resources from substantial risk of harm, theft, or destruction. However, it would establish procedures for the release of such information for legitimate cave management purposes.

A permit system would be established for the collection and removal of cave materials where consistent with the purposes of the Act. National Park System and National Wildlife Refuge System lands would be exempt from this provision. The bill would establish specific prohibitions and associated criminal and civil penalties for violations. The bill would authorize appropriations and establish a special fund for the management and protection of Federal cave re-

sources. The special fund would be derived from permit fees, forfeiture of permittee bonds, and collected civil penalties or criminal fines for violation of the Act. The bill would require development of joint regulations by the Secretaries of Agriculture and the Interior.

We recommend that section 4 be amended by rewording 4(c) and adding a new provision. Section 4(c) states "The Secretary may disturb Federal cave resources where the Secretary finds that such a disturbance is necessary for the management or interpretation of a Federal cave resource." This could be interpreted as being very restrictive under the proposed "Federal cave resource" definition in section 3. A Federal cave resource is defined as a cave located on Federal lands, together with associated topographic and hydrological features, and a cave is defined as a naturally occurring void, cavity, recess or system of interconnected passages that is large enough to permit an individual to enter. Many activities, including road construction and maintenance, campground construction, range improvement, timber harvest, wildlife habitat improvement, and other activities, could affect an inconsequential cave, especially in areas dominated by a limestone substrate, and thus be interpreted as not necessary for the management or interpretation of a Federal cave resource.

We have provided suggested language for subsection 4(c) and a new subsection, 4(d), in the enclosed supplemental statement. The new subsection is a "Savings Provision" similar to the savings provision in the Archeological Resources Protection Act of 1979.

We recommend that section 9(b) be deleted. We believe that the small amount of funds likely to be collected from permits, forfeiture of bonds, and penalties should be deposited in the Treasury, as are most similar monies. Regular appropriation authority in section 9(a) is sufficient to carry out the purposes of the bill.

We strongly recommend that "joint" be deleted from section 10. Since the new regulations would need to tie to and be in concert with existing regulations and statutory authorities of the respective Departments, it would facilitate implementation of the Act if each agency developed its own regulations. We would expect to coordinate our regulation development with the Department of the Interior to provide overall government consistency.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

PETER C. MYERS,
Acting Secretary.

SUPPLEMENTAL STATEMENT, U.S. DEPARTMENT OF AGRICULTURE, PROPOSED AMENDMENTS TO S. 927, FEDERAL CAVE RESOURCES PROTECTION ACT OF 1987

1. Delete Section 4(c), and insert the following subsection:

(c) DISTURBANCE OF FEDERAL CAVE RESOURCES FOR MANAGEMENT PURPOSES.—The Secretary may disturb Federal cave resources where the Secretary finds that such a disturbance is necessary for other multiple use objectives or the interpretation of a Federal cave resource.

2. Add a new subsection, 4(d), as follows:

(d) SAVINGS PROVISION.—Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the Federal lands.

3. For consistency, amend section 7(a) as follows: On page 9, line 18, after the words "section 4(c)" add ", 4(d)".

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act, H.R. 1975, as reported.

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